98-161 DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
GTE Telephone Operators	)	CC Docket No. 98-79
GTOC Tariff No. 1	)	
GTOC Transmittal No. 1148	)	
In the Matter of	)	
	)	
Pacific Bell Telephone Company	)	CC Docket No. 98-103
Pacific Bell Tariff FCC No. 128	)	
Pacific Bell Transmittal No. 1986	)	
In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	CC Docket No. 98-161
BellSouth Tariff FCC No. 1	)	
BellSouth Transmittal No. 476	)	

COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association ("USTA") hereby files its Comments in response to the Commission's investigation of interstate tariffs in the above-referenced proceedings. USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECs").

Asymmetrical Digital Subscriber Line ("ADSL") is a transmission path, a pipeline, and conduit for deployment of high-speed data and Internet traffic which is jurisdictionally interstate.

USTA supports the arguments made by BellSouth,[1] GTE,[2] and Pacific Bell[3] involving their interstate ADSL tariff offerings.[4] This interstate service will enable customers, such as Internet Service Providers ("ISPs), Interexchange ("IXCs"), or competitive local exchange carriers ("CLECs"), to provide high-speed Internet access to their end-users. Moreover, removal of regulatory uncertainty regarding Commission jurisdiction over ILEC deployment of ADSL will increase customer choices, further Internet access competition, ensure rapid ILEC response to the nationwide demand for high-speed bandwidth capacity,[5] and provide incentives necessary for

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[1] *In the Matter of BellSouth Telecommunications, Inc., BellSouth Tariff FCC No. 1, BellSouth Transmittal No. 476*, CC Docket No. 98-161, *Direct Case of BellSouth Telecommunications, Inc.*, September 11, 1998.

[2] *In the Matter of GTE Telephone Operating Companies, GTOC Tariff FCC No. 1, GTOC Transmittal No. 1148*, CC Docket No. 98-79, *Direct Case of GTE*, September 8, 1998.

[3] *In the Matter of Pacific Bell Telephone Company, Pacific Bell Tariff FCC No. 128, Pacific Bell Transmittal No. 1986*, CC Docket No. 98-103, *Direct Case of Pacific Bell*, September 11, 1998.

[4] ADSL is just one type of DSL service. High-speed digital subscriber line ("HDSL"), universal digital subscriber line ("UDSL"), very high-speed digital subscriber line ("VDSL"), and rate-adaptive digital subscriber line ("RADSL") are other forms of xDSL services.

[5] *See, e.g.*, USTA *ex parte* letter and attachment from Lawrence E. Sarjeant, Vice President Regulatory Affairs & General Counsel to Commission Secretary Magalie Roman Salas, CC Docket Nos. 98-146 and 98-147, August 12, 1998 citing USTA's *ex parte* presentation to Commission Chairman William E. Kennard, and Commissioners Susan Ness, Michael K. Powell, Harold Furchgott-Roth, and Gloria Tristani, regarding Crandall & Jackson, *Eliminating Barriers to DSL Service* at 5, July 1998 ("The rapid growth of the Internet has created new demands for communications capabilities."); Esbin, *Internet Over Cable: Defining the Future in Terms of the Past* at 6, OPP Working Paper Series No. 30, dated August 1998 ("Spiraling growth is one of the hallmarks of the Internet .... This expansion is driving dramatic increases in computer, software, services, and communications investments.").

ILECs to deploy advanced telecommunications networks consistent with the pro-competitive, deregulatory intent of the Telecommunications Act of 1996 ("Act").

Commission action that eliminates regulatory uncertainty regarding ILEC ADSL tariffs is in the public interest. Market-based forces, not government regulations, are the best assurance that the public's demand for high-speed data and Internet capacity can be met.

According to the Commission's August 20, 1998 Order designating GTE's tariff for investigation:

> The threshold issue raised by GTE's tariff and the petitioners is whether GTE's DSL service offering is an interstate service, properly tariffed at the federal level, or an intrastate service that should be tariffed at the state level.[6]

It is well established that the nature of the communications traffic, not its physical location, governs Commission jurisdiction over such traffic.[7] In describing the nature of Internet traffic, the Commission has concluded:

> The Internet is a distributed packet-switched network, which means that information is split up into small chunks or "packets" that are individually routed through the most efficient path to their destination. Even two packets from the same message may travel over different physical paths

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[6] *Commission Order Designating Issues for Investigation* at 4, ¶12.

[7] *See, e.g., BellSouth Direct Case* at 8 (citing several federal appellate court decisions); *USTA Comments* at 3-5 ("The Commission has reiterated on numerous occasions that it has jurisdiction over traffic that is jurisdictionally interstate .... Internet traffic is access traffic that is jurisdictionally interstate...."), CCB/CPD 97-30, *Request by ALTS for Clarification Regarding Reciprocal Compensation for ISP Traffic*, July 17, 1997.

> through the network. Packet switching also enables users to invoke multiple Internet services simultaneously, and to access information with no knowledge of the physical location of the server where that information resides.[8]

Clearly, as the Commission acknowledges, Internet traffic cannot be jurisdictionally segregated into interstate and intrastate components. The Commission's position is consistent with the arguments made by GTE in its Direct Case:

> As a technological matter, due to the nature of the Internet protocol and the way users utilize the Internet, Internet traffic cannot be separated into jurisdictional categories. A single Internet session may involve intrastate, interstate and international communications consecutively or concurrently. In this context, the intrastate uses cannot be segregated from the predominant interstate services. This inability to segregate traffic warrants interstate treatment under the inseparability doctrine.[9]

As BellSouth argues:

> The inability to distinguish the jurisdictional nature of each communication that traverses an Internet connection coupled with the predominant interstate nature of Internet communications lead to the inescapable conclusion that all Internet traffic must be considered jurisdictionally interstate. It follows that the basic services, such as ADSL, that ISPs use to provide Internet services must also be

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[8] *In the Matter of Federal State Joint Board on Universal Service* at 33, ¶64, CC Docket No. 96-45 ("Universal Service Report to Congress"), FCC 98-67, released April 10, 1998.

[9] *GTE Direct Case* at 2.

jurisdictionally interstate.[10]

According to Pacific Bell:

> [A]s an empirical matter, it is not possible (i) to separate by jurisdiction the intrastate and interstate aspects of a single Internet call or connection in which an end-user sequentially communicates with multiple destinations, some intrastate, some interstate, and some international; (ii) to separate the intrastate and interstate aspects when the end-user is simultaneously engaged in intrastate, interstate, and international communications over the Internet; and (iii) to determine whether the call is intrastate, or interstate when the location of the destination point is unknown.[11]

A recent working paper from the Commission's Office of Plans and Policy ("OPP") recognized that unlike voice traffic on the Public Switched Telephone Network, Internet traffic "has no built-in jurisdictional divisions."[12] As the OPP staff explained:

> [B]ecause the Internet is a dynamically routed, packet-switched network, only the origination point of an Internet connection can be identified with clarity. Users generally do not open Internet connections to "call" a discrete recipient, but access various Internet sites during the course of a single connection.

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[10] *BellSouth Direct Case* at 15.

[11] *Pacific Bell Direct Case* at 11-12.

[12] *See* Werbach, *Digital Tornado: The Internet and Telecommunications Policy*, OPP Working Paper Series No. 29 at 45, dated March 1997; *See also*, Esbin, *Internet Over Cable: Defining the Future in Terms of the Past* at 12, OPP Woking Paper Series No. 30, dated August 1998 ("There is no centralized storage location, control point, or communications channel for the Internet.").

> One Internet 'call' may connect the user to information both across the street and on the other side of the world.[13]

The OPP staff also noted that from a technical perspective, the Internet does not classify traffic according to jurisdictional categories:

> Internet routers have also not been designed to record sufficient data about packets to support jurisdictional segregation of traffic.[14]

Similarly, a more recent OPP report on the Internet and cable stated:

> The data comprising an Internet communication can therefore be handled by numerous different networks, with different portions of the communications being routed over completely different computer networks. Internet routers have no fixed routing tables, but rather dynamically update themselves by "talking" autonomously to other routers on the Internet in order to find available paths over which to transmit Internet data packets. There is no certainty that IP packets will follow the same path for a continuing stream of data or session; and if the underlying connectivity is broken or if congestion arises, an almost infinite array of alternative paths could be employed without the user or ISPs knowing it.[15]

Regarding the jurisdictional nature of leased lines to Internet service providers, the Commission's *Universal Service Report to Congress* states:

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[13] *Digital Tornado* at 45.

[14] *Id.* at 45, note 22.

[15] Esbin, *Internet Over Cable: Defining the Future in Terms of the Past* at 14, OPP Woking Paper Series No. 30 dated August 1998.

> The provision of leased lines to Internet service providers ... constitutes the provision of interstate telecommunications.[16]

ADSL is a pure transmission pipeline to high-speed Internet access, and must be provided through an interstate tariff given that ISPs, IXCs, and CLECs are leasing lines to provide interstate telecommunications. As the Commission has recognized:

> In essential aspect, Internet access providers, typically, own no telecommunications facilities. Rather, in order to provide those components of Internet access services that involve information transport, they lease lines, and otherwise acquire telecommunications, from telecommunications providers -- interexchange carriers, incumbent local exchange carriers, competitive local exchange carriers, and others.[17]

USTA urges the Commission to eliminate regulatory uncertainty regarding the jurisdictional nature of ADSL tariffs filed by GTE, BellSouth, Pacific Bell and other ILECs. ADSL is a conduit for providing access to high-speed data and Internet services. Consistent with Commission and judicial precedents, and the arguments set forth in the GTE, BellSouth, and Pacific Bell Direct cases, the traffic carried over an ADSL is jurisdictionally interstate and cannot be segregated. ILEC ADSL tariffs will speed the deployment of advanced telecommunications networks and services intended by the Act by providing a competitive alternative to other Internet access services.

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[16] *Universal Service Report to Congress* at 34, ¶67.

[17] *Id.* at 41, ¶81

Respectfully submitted,

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September 18, 1998

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